

S.B.CIVIL WRIT PETITION NO.4882/2005

Naina Ram
V.
State of Rajasthan & Ors.

Date of Order :: 7th November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Manoj Bhandari, for the petitioner.
Mr. Shyam Ladrecha, Addl.G.A.

....

The petitioner who was initially in employment of Government of Rajasthan in the capacity of a work charged employee was taken in regular cadre w.e.f. 1.2.1979 by an order dated 28.10.1982. The Additional Chief Engineer, Public Works Department, Jodhpur Division, Jodhpur passed an order dated 21.6.2005 retiring the petitioner w.e.f. 31.8.2003 on achieving the age of 58 years. In compliance of the order dated 21.6.2005 the Assistant Engineer, Public Works Department, City Sub Division-I, retired the petitioner with retrospective effect as according to the respondents the petitioner acquired the age of 58 years on 31.8.2003. Being aggrieved by the order dated 21.6.2005 passed by the Additional Chief Engineer, as well as its consequential order passed by the Assistant Engineer, Public Works Department the petitioner preferred this petition for writ.

The contention of counsel for the petitioner is that under the Rajasthan Service Rules, 1951

(hereinafter referred to as "the Act of 1951") the age of the retirement for a regular government servant belonging to Class-IV cadre is 60 years and, therefore, there was no occasion to retire the petitioner w.e.f. 31.8.2003 on achieving the age of 58 years. It is also contended that the respondents erroneously treated the petitioner as a work charged employee despite regularisation of his service under the order dated 28.10.1982 w.e.f. 1.2.1979. Counsel for the petitioner for the reasons above also gave challenge to the order effecting recovery of the amount said to be paid in excess by treating 31.8.2003 as the date of retirement of the petitioner.

Per contra, in reply to the writ petition it is stated that the age of retirement for the petitioner is 58 years and, therefore, he was erroneously allowed to continue in service after 31.8.2003 and the competent authority on knowing about the erroneous continuation of the petitioner in service rightly passed the order dated 21.6.2005 retiring the petitioner w.e.f. 31.8.2003.

Heard counsel for the parties.

It is not in dispute that by order dated 28.10.1982 the petitioner was taken in regular cadre of Government of Rajasthan w.e.f. 1.2.1979, as such after 1.2.1979 the petitioner ceased to be work

charged employee and became an employee in regular cadre of Government of Rajasthan. According to Rule 56-A of the Rules of 1951 the age of retirement for a Class-IV employee is 60 years and not 58 years. The age of 58 years is prescribed as the age of superannuation for work charged employee, however, the petitioner being taken on regular cadre of Government of Rajasthan w.e.f. 1.2.1979 ceased to be a work charged employee and, therefore, his case could not be treated under the work Charged Employees Rules, 1964. The date of retirement of the petitioner is required to be determined in accordance with Rule 56-A of the Rules of 1951. As such the respondents by treating the petitioner a work charged employee wrongly decided to retire him from service w.e.f. 31.8.2003. The petitioner in view of the provisions of Rule 56-A of the Rules of 1951 is entitled to continue in service upto 31.8.2005.

In view of whatever discussed above, this petition for writ deserves acceptance. The same, therefore, is allowed. The order dated 21.6.2005 passed by the Additional Chief Engineer, Public Works Department, Jodhpur Division, Jodhpur and its consequential order dated 21.6.2005 passed by the Assistant Engineer, Public Works Department, City Sub Division, Jodhpur are hereby quashed. The respondents are directed to treat the petitioner in service upto 31.8.2005. The retiral benefits required to be given

to the petitioner should also be determined accordingly. If the respondents in pursuant to the orders dated 21.6.2005 referred above have effected any recovery from the petitioner then the amount so recovered shall be refunded to him expeditiously.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.